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In the Supreme Court of the United States

OCTOBER TERM, 1941

KEYSTONE FREIGHT LINES, INC., a Corporation,
Petitioner,

VERSUS

LEE WAY MOTOR FREIGHT, INC., a Corporation; POWELL BROS. TRUCK LINES, INC., a Corporation; CLANTON TRANSPORTATION COMPANY, a Corporation; PANHANDLE MOTOR LINES, a Corporation; RISS & COMPANY, INC., a Corporation; CAIN'S TRUCK LINES; THE SANTA FE TRAILS TRANSPORTATION COMPANY; and RALPH W. PORTER, Executor of the Estate of ERNEST W. LYMAN, Deceased, Sole Owner and Doing Business Under the Firm Name and Style of Lyman Truck Lines,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT, AND SUPPORTING BRIEF

JOHN B. DUDLEY,
DUKE DUVALL,
Counsel for Petitioner.

June, 1942.

UTTERBACK TYPESETTING CO., OKLAHOMA CITY, OKLA.

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LEE WAY MOTOR FREIGHT, INC., a Corporation; POWELL BROS. TRUCK LINES, INC., a Corporation; CLANTON TRANSPORTATION COMPANY, a Corporation; PANHANDLE MOTOR LINES, a Corporation; RISS & COMPANY, INC., a Corporation; CAIN'S TRUCK LINES; THE SANTA FE TRAILS TRANSPORTATION COMPANY; and RALPH W. PORTER, Executor of the Estate of ERNEST W. LYMAN, Deceased, Sole Owner and Doing Business Under the Firm Name and Style of Lyman Truck Lines,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT

TO THE HONORABLE THE SUPREME COURT OF THE UNITED STATES:

The petitioner, Keystone Freight Lines, Inc., respectfully shows:

A SUMMARY STATEMENT OF THE MATTER INVOLVED

The pertinent facts were stipulated in the trial court (R. 77). Petitioner is a common carrier of commodities generally in interstate commerce by motor vehicle, operat-

ing under certificate of authority from the Interstate Commerce Commission under the provisions of the Federal Motor Carrier Act of 1935, as amended (49 U. S. C. A. 301-327) (R. 91).

The respondents are likewise such carriers, and have on file with the Interstate Commerce Commission joint tariffs and through rates with petitioner (R. 91).

On a certain date, respondents and other defendant motor carriers who did not appeal from the judgment of the trial court, constituting more than thirty in number (R. 81) and a majority of the carriers of this type operating into Tulsa and Oklahoma City, suddenly refused to interline freight with petitioner as required by the Interstate Commerce Act and the aforesaid tariffs of said carriers (R. 76, 92).

This action was then instituted in the District Court of the United States for the Western District of Oklahoma, for a mandatory injunction to compel said carriers to perform their duties as common carriers under the Interstate Commerce Act and the aforesaid tariffs, and interline freight with petitioner.

The defendant carriers stipulated (R. 93) that the sole reason for the termination of their relationship with petitioner was because of a notice from the International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, with which they each had closed-shop contracts, that petitioner had been placed upon the Union's un-

fair list, and that if their employees were required to handle such freight, they would be called out on strike.

Petitioner was involved in a labor dispute with the Teamsters Union at the time of the cessation by defendant carriers of their connecting carrier relationship with petitioner and at the time of the commencement and trial of this action. *National Labor R. Board* v. *Keystone Freight Lines,* 126 Fed. (2d) 414 (10th Circuit).

DECISIONS BELOW

Neither the Labor Union nor any of its members were parties to the suit; nor were any employees of plaintiff or defendants parties. The Union petitioned for leave to intervene, which was refused by the trial court, *Keystone Freight Lines* v. *Pratt Thomas Truck Lines,* 37 F. S. 635, and appeal was dismissed by the Circuit Court, *International Brotherhood* v. *Keystone Freight Lines,* 123 Fed. (2d) 326.

The trial court granted the injunction (R. 83), and the Circuit Court reversed (R. 108, 113). *Lee Way Motor Freight Lines* v. *Keystone Freight Lines,* 126 Fed. (2d) 931, holding that the trial court was without jurisdiction to grant the injunction under the Norris-La Guardia Act, 29 U. S. C. A. 101-115.

JURISDICTION

The date of the decision and judgment sought to be reviewed is March 18, 1942 (R. 108, 113).

The petition is filed under the provisions of Section 240(a) of the Judicial Code, as amended, 28 U. S. C. A. 347(a).

QUESTIONS PRESENTED

The decision of the Circuit Court of Appeals is based upon the aforesaid stipulation of facts filed by the parties in the trial court, and the question involved is purely one of law.

The sole issue is whether or not the Norris-La Guardia Act applies and rendered the trial court without jurisdiction to enter the mandatory injunction. The questions presented are:

(1) Is there a labor dispute involved within the purview of the Norris-La Guardia Act, where neither employees, labor unions nor their members are parties to the action, and where neither wages, hours, conditions of employment nor representation of employees were involved in the suit?

(2) Is the Norris-La Guardia Act a defense to a suit by a shipper or connecting carrier to enforce common carriers to perform their statutory and common law duties, because such shipper or connecting carrier is involved in a labor dispute?

(3) The Interstate Commerce Commission has held[1] that it is no defense by a motor carrier for failure to perform its duties as a common carrier under the Interstate Commerce Act, that it had a closed-shop union contract providing that it should not handle the goods of one declared unfair by the Union, and the shipper whose goods the motor carrier refused to handle had been placed upon the unfair list by such Union. The Commission held such action unlawful, and ordered such carrier to cease and desist from such refusal to handle the goods of such shipper. Was it the intention of Congress that the Norris-La Guardia Act should prevent enforcement of such orders by the federal courts, or an original action in the federal courts to enforce performance of its common law and statutory duty by a common carrier under such circumstances?

REASONS RELIED ON FOR ALLOWANCE OF WRIT

The reasons upon which petitioner relies for the granting of this petition are as follows:

(1) The Circuit Court of Appeals has decided a Federal question in a way probably in conflict with the applicable decisions of this Court. In any event, if this not be true, then,

(2) The Circuit Court of Appeals has decided an important question of federal law which has not been but

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1. *Planters Nut & Chocolate Company* v. *American Transfer Company*, 31 M. C. C. 719, decided January 21, 1942 (not yet available in bound volume).

should be settled by this Court. *Columbia River Packers Association* v. *Hinton*, 62 S. Ct. 520, 86 L. ed. 441 (Ad. Ops.).

(3) The question involved is one of great public importance, affecting the enforcement of the duties of common carriers by motor vehicle under the Interstate Commerce Act, the power of enforcement of orders of the Interstate Commerce Commission requiring common carriers by motor vehicle to perform their duties under the Interstate Commerce Act, and affects the entire motor carrier industry of the Nation and the general shipping public.

Accompanying this petition is a certified transcript of the record in the case, including the proceedings in the Circuit Court of Appeals.

Wherefore, petitioner respectfully prays that a writ of certiorari may be issued out of and under the Seal of this Honorable Court, directed to the United States Circuit Court of Appeals for the Tenth Circuit, commanding that Court to certify and to send to this Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case numbered and entitled on its docket: No. 2398, Lee Way Motor Freight, Inc., a corporation; Powell Bros. Truck Lines, Inc., a corporation; Clanton Transportation Company, a corporation; Panhandle Motor Lines, a corporation; Riss & Company, Inc., a corporation; Cain's Truck Lines; The Santa Fe Trails Transportation Company; and Ralph W. Porter, executor of the estate of Ernest W.

Lyman, deceased, sole owner and doing business under the firm name and style of Lyman Truck Lines, Appellants, *vs.* Keystone Freight Lines, Inc., a corporation, Appellee; and that the said judgment of the Circuit Court may be reversed by this Honorable Court, and that your petitioner may have such other and further relief in the premises as to this Honorable Court may seem mete and just; and your petitioner will ever pray.

JOHN B. DUDLEY,
DUKE DUVALL,
Counsel for Petitioner.

June, 1942.